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\*E-Filed 7/13/09\*

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

12 MICHELLE WAHL, on behalf of herself and all others similarly situated,

Case No. 5:08 CV 0555 RS

**Plaintiff,**

V.

**16** AMERICAN SECURITY INSURANCE COMPANY: and DOES 1-10, inclusive.

**ORDER DENYING MOTION FOR  
LEAVE TO FILE MOTION FOR  
RECONSIDERATION**

## Defendants.

19        THIS MATTER is before the Court on a motion filed by defendant American Security  
20 Insurance Company ("ASIC"), requesting leave to file a motion for reconsideration of the Court's  
21 order granting in part and denying in part ASIC's summary judgment motion. For the reasons stated  
22 below, the motion for leave to file a motion for reconsideration is denied.

23 The Court's summary judgment order, which was filed on June 18, 2009, granted summary  
24 judgment in favor of ASIC as to the first and fourth claims listed in plaintiff Michelle Wahl's First  
25 Amended Complaint ("FAC"). Order of June 18, 2009, at 12. These two claims alleged breach of  
26 contract and failure of consideration, respectively. The order went on to deny summary judgment  
27 as to Wahl's second, third, and fifth claims, which respectively alleged breach of statutory duty to

1 disclose, constructive fraud, and violations of unfair competition law.<sup>1</sup> *Id.* In denying summary  
 2 judgment on these three claims, the Court noted that the parties' summary judgment briefs focused  
 3 principally on breach of contract and devoted little substantive discussion to anything else. *Id.* at 10.

4       ASIC argues in the instant motion that the Court has "implemented a phased schedule for  
 5 discovery and briefing on ASIC's summary judgment motion," and that ASIC was complying with  
 6 this schedule in the most recent round of motion practice. This, ASIC contends, is why it devoted  
 7 little or no argument to the propriety of summary judgment on Wahl's second, third, and fifth claims.  
 8 In support of its position, ASIC cites the parties' joint case management statement, filed February  
 9 29, 2008, and the Court's corresponding case management scheduling order, filed July 16, 2008.

10       The case management order in question does indeed set forth a summary judgment briefing  
 11 schedule, including a deadline for any discovery related to the summary judgment motion. Order of  
 12 July 16, 2008, at 1-2. The order gives no indication, however, that a phased schedule for summary  
 13 judgment exists. Even more significantly, ASIC's motion for summary judgment states that ASIC  
 14 "will and hereby does move this Court to grant summary judgment in its favor on plaintiff's First  
 15 Amended Complaint ("FAC"), and the First, Second, Third, Fourth, Fifth, and Seventh Claims  
 16 thereof." Defendant's Notice of Motion and Motion for Summary Judgment, filed October 1, 2008,  
 17 at iv (footnote omitted). Thus, even if phased summary judgment had been contemplated at the July  
 18 2008 case management conference, the October 2008 summary judgment motion explicitly  
 19 encompassed all the claims for relief cited in the June 18, 2009, order.

20       In short, ASIC has failed to show any reason why, at this phase of the proceedings, it should  
 21 be entitled to a second bite at the summary judgment apple. Reconsideration of the Court's summary  
 22 judgment order is not warranted in this case, and the motion for leave to file a motion for  
 23 reconsideration is accordingly denied.

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27       <sup>1</sup> The FAC lists a sixth claim alleging violations of the Consumers Legal Remedies Act, Cal Civ.  
 28 Code §§ 1750 et seq. The Court earlier dismissed this claim without prejudice, *see* Order of June 16,  
 2008, at 6, and Wahl has not renewed it. Finally, the FAC's seventh claim, rather than stating a distinct  
 claim for relief, simply requests declaratory relief, and so far, has not been the subject of separate  
 discussion by the parties or the Court.

1 IT IS SO ORDERED.  
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3 Dated: 7/13/09  
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RICHARD SEEBORG  
United States Magistrate Judge